IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH

AT JAIPUR

JUDGMENT

DB. CIVIL WRIT (PAROLE) NO. 4954/06

(SUNIL KUMAR Vs. STATE OF RAJ. & ORS.)

.

DATE OF JUDGMENT : JULY 6 , 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE R.S. CHAUHAN

Mr. Sumer Singh for the petitioner.
Mr. M.L. Goyal, Dy. G.A. for the respondents.

BY THE COURT : (PER HON'BLE CHAUHAN J.)

REPORTABLE

The petitioner has challenged the order dated 13.2.06 passed by the Advisory Committee constituted under the Rajasthan Prisoners Release (Transfer to Open Air Jail) Rules, 1972 (henceforth to be referred to as 'the Rules) whereby the Committee had rejected the petitioner's case for being transferred from the Central Jail, Jaipur to an Open Air Camp in Jaipur.

The brief facts of the case are that the petitioner was tried, convicted and sentenced for offence under Section 302/49 IPC

by the Sessions Judge, Jhunjhunu vide judgment dated 11.10.2000. The petitioner had preferred an appeal before this Court. However, the same was dismissed vide judgment dated 18.12.98. It is the petitioner's case that so far he has completed eight years of imprisonment, that he is the only son of Smt. Sugani Devi who is suffering from hypertension and asthma for the last ten years. During the period of incarceration, his conduct in the jail has been good. Since there is no one to look after his ailing mother, the petitioner had applied for his transfer from the Central Jail to the Open Air Jail at Sanganer in Jaipur under the Rules. Since the respondents had not acted upon his application, the petitioner had earlier preferred a writ petition before this Court, which was registered as DBCWP No. 9030/05. Vide order dated 9.1.06 this Court had directed the respondents to consider the petitioner's case for being transferred to the Open Air Camp at Sanganer. Therefore, the Advisory Committee had considered the petitioner's case in its meeting on 13.2.06 and rejected the same. Hence, this petition before this court.

Mr. Sumer Singh, the learned counsel for the petitioner, has vehemently argued that the Advisory Committee has rejected the petitioner's case ostensibly on two grounds; firstly that he is

unmarried; therefore, he is ineligible under Rule 3 of the Rules. Secondly, that he is not within the zone of consideration, as prisoners are transferred on the basis of their seniority i.e. the number of years of incarceration. According to the learned counsel Rule 3 uses the word “ordinarily” which clearly shows that Rule 3 does not prescribe a blanket ban about the ineligibility of the convict prisoners. Furthermore, in case the petitioner is transferred he would be able to look after his ailing mother.

On the other hand, Mr. M.L. Goyal, the learned Public Prosecutor, has strenuously argued that the space available in the Open Air Camp is limited. Therefore, a large number of prisoners cannot be transferred from the Central Jail to the Open Air Camps. Since the space is limited and since there are large number of prisoners waiting in que for their transfers, according to Rule 6 the transfers are done on the basis of seniority i.e. the numbers of years the prisoners have spent in incarceration. According to the learned counsel the prisoners up to Serial No. 46 were transferred whereas the petitioner stands at Serial No. 87 of the seniority list. Therefore, no person junior to the petitioner has been transferred. The last person to be transferred had completed nine years of imprisonment

whereas the petitioner has served only eight years and four months. Hence, he was not eligible for transfer.

We have heard both the learned counsels and have perused the record produced before us.

A bare perusal of the seniority list submitted by the respondents clearly shows that the petitioner is at Serial No. 87 whereas the last person to be transferred was at Serial No. 46. Thus, clearly no person who has served less period of incarceration than the petitioner has been transferred. Hence, we need not even go into the question of the constitutional validity of Rule 3(m) of the Rules.

In the result, this petition has no merit. It is, hereby, dismissed.

(R.S. CHAUHAN) J. (SHIV KUMAR SHARMA) J.

MRG.